



## STURGIS POLICE DEPARTMENT

Policy/Procedure #

300-5

No. Pages: **10**

### Bad Check Complaints

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Distribution  
List:

☒ Road Patrol, ☒ Detective Bureau, ☒ Support.

### PURPOSE

It shall be the policy of this Department to receive checks presented for investigation by residents and places of business within the City. Complaints are received involving No Account, Non-Sufficient Funds, Forgery or Altered Checks shall be handled as outlined in the attached procedure.

No Department member shall receive any check for investigation unless it meets the guidelines prescribed within the attached policy and procedure.

The key elements of the policy and procedure relating to check investigation are the minimum requirements that must be met by the complainant when presenting the check for investigation. The Department's responsibility is to investigate for the purpose of prosecution, not to serve as a collection agency.

### POLICY

#### SECTION I: TYPES OF CHECKS

- A. **"Caution Checks"**: You may choose to accept this type of check, however, the success of the investigation, apprehension, and prosecution is reduced. Be sure you are satisfied with the answers the check passer gives.
1. **Different Address**: The address on the operators license should be the same as on the check. If it is not then obtain more identification or information until you are satisfied you have the correct address. If the proper address cannot be established, or you are not satisfied, do not take the check.
  2. **P. O. Box Address**: If the address on the check or license is a P.O. Box number, use caution. The Post Office cannot give an address on a box number. Establish the proper address or refuse the check.
  3. **Location of the Bank**: The best chance to recover a bad check is when it is written on a local bank, or a bank that is a reasonable distance from St. Joseph County.

4. Person Presenting Check Did Not Sign the Check: This will sometimes happen in a case where a husband gives his wife a check or visa versa to cash. Have the person passing the check sign under the first signer, then obtain property ID.

**B. “At Your Own Risk Checks”:** The checks accepted under this category will not be eligible for investigation or prosecution. Therefore, be sure you can afford to lose the amount the check is written for if it is returned to you.

1. Post Dated Checks: Should you agree to hold a check when the check passer asks you to, this becomes a “promissory note” and cannot be prosecuted as a bad check
2. Two Party Checks: The check must be made payable to cash, your business name, or yourself. A two party check cannot be prosecuted as a bad check.
3. Out of State Checks: Checks written on an out of state bank will not be accepted for investigation or prosecution.
4. Checks over 60 days old: Checks over 60 days old will not be accepted for investigation and prosecution under normal circumstances.
5. Checks under \$50.00: Checks under \$50.00 will not be accepted for prosecution unless there are (3) three within 10 days written by the same person. Both NSF and Account Closed checks may be used as part of the (3) checks required.

**C. “Red Flags”:** Experience is the best teacher of knowing what type of checks to avoid. The following list should raise questions on the check you may accept. Not all checks that have the following problems may be bad, but use care when accepting them.

1. Operators License Has Been Laminated: Check for tampering with numbers, photograph, address and any other information. Michigan operator’s licenses no longer come laminated.
2. Check Numbers: Studies have shown that 80% of bad checks are starter accounts and checks with numbers under 300.
3. Phone Numbers: Studies have also shown that 80% of people who pass bad checks do not have a phone or it is unlisted. You may wish to check the name of the person passing the check in the phone book.
4. Tampered or Altered Checks: Numbers can be changed to represent a different amount that the check was written for. Request a new check or do not accept the check presented.
5. Account Opening Date: Checks will have an opening date printed on them starting in 1985 as provided by Michigan law. Accounts with a date of less than six months and/or numbers of less than 300 should be carefully examined.

6. Payroll Checks: Payroll checks that are returned as NSF, Account Closed or Stop Payment will be investigated by the Department of Labor. Checks that are returned as Forged will be investigated by law enforcement. Payroll checks are the most common type of stolen and counterfeit checks.
7. Government Checks: Federal and State checks are often stolen from the mail system. Know your passer.

## **SECTION II: RETURNED CHECKS**

**A. Types of Returned Checks:** There are (4) four types of checks that may be returned. They are as follows:

1. Non-Sufficient Funds: An NSF check should be presented twice to the bank. Most checks will clear the second time they are presented. Should the check not clear the second time, do one or more of the following:
  - a. Make a telephone contact with the person who passed the check. Make sure you note the time, date and the person you spoke with if you make contact.
  - b. Make personal contact at the person's home. Again, make note of the time, date and the person you spoke with. This may be a good time to hand them a "Five Day Notice" (see Five Day Notice)
  - c. Send a letter to advise the check passer their check was returned to you. This can be done by first class mail. Be sure to keep a copy of the letter with your check in the file.
2. Account Closed: Do not send the check back to the bank. **Closed account checks do not require a 5 day notice to be served.** Checks returned "Closed Account", or "Account Closed" will be accepted with the 'Bad Check Information Form', but will not result in prosecution unless subsequent police investigation shows the passer knew the account was closed or they are part of (3) checks passed within 10 days that are bad.
3. Stop Payment: Do not send the check back to the bank. Use the same outline as the NSF checks.
4. Forged Checks: **Do Not** handle the check or pass it around for everyone to examine. Place the check in an envelope immediately, touching the check at the very edge only. Call your law enforcement agency immediately to file a report.
5. Returned Checks written within 10 days: There is no minimum value amount for at least (3) checks written within 10 days. These checks may be either NSF or CLOSED ACCOUNT and may be submitted for investigation and prosecution

### **SECTION III: CHECK IDENTIFICATION**

**A. Verifying & Documenting Identification:** Identification of the person passing the check is made when the check is presented. The following procedure should be completed on all checks accepted.

1. Right index finger print required: (Left index if R. unavailable) All NSF checks over \$50.00 and under \$500.00 **MUST** have the passers right index print on the check before being accepted for prosecution. Place print on the FRONT CENTER of the check to avoid later printing from bank processing to be stamped over the print.
2. Initials or Employee number: the person who accepts the check **MUST** initial or write their employee number on the check (Machine print is acceptable). This must be done even if you know the person who is passing the check. **Do Not** accept the check just because the operators license number is already printed on the check. **Do Not** just circle the operators license number that already appears on the check. **You** must verify the operators license number on the check and initial. (See OTHER IDENTIFICATION if the person does not have a Michigan operators license.
3. Date of birth: The person who is passing the check **MUST** have their date of birth written on the check. This information is located on the operators license.
4. Race and Sex: The person's race and sex **MAY** be written on the check. If you write this on the check, you **MUST** enter the race and sex on **ALL** checks that you accept. This is an option, however, the information will assist law enforcement in identifying the person who passed the bad check.
  - W= White
  - B = Black
  - H = Hispanic
  - O = Oriental
  - U = unknown
5. Photograph on ID: The person accepting the check **MUST** compare the photograph on the operators license with the person passing the check. The person and the photograph must appear to be the same.
6. Signature on license and check: The signature **MUST** be compared between the operators license and the check. They must appear to be the same. Remember, the space on the license is smaller than on the check and the signature will not appear to be exact.
7. Two pieces of Identification: Two pieces of identification are always best. The Michigan operators license is the best source of primary identification due to built-in safeguards against reproduction of false identification, however, these too must be examined for signs of tampering. Pictured ID from a local company may be acceptable as well as major credit cards with the same name. If you are unsure of the person's ID, **DO NOT ACCEPT THE CHECK.**

**B. Poor identification:** There are two types of identification that have very little value.

1. Michigan Personal Identification Cards: The Michigan Personal ID card is a very poor type of identification, because a birth certificate is the only piece of identification required to secure the card. Many people who pass bad or stolen checks attempt to use this as a valid ID. An ID card looks similar to an operators license yet has only 10 numbers whereas the operators license has 12.
2. Social Security Card: The Federal Government will not release the name of the person who has been assigned a social security number. Many people who pass a bad or stolen check may have more than one card assigned to them; therefore this information is of no value.

#### **SECTION IV : CHECK RECOVERY**

**A. Types of Collection:** There are three ways to attempt to recover your loss in the event your contacts and letters have proven fruitless. NOTE: You cannot use the civil court or a collection agency and then pursue criminal charges.

1. Civil Court: The dollar amount of the check will be a factor on how you should handle your court action. NOTE: You will be required to follow the check identification and the filing of a notice even on a civil court action.
  - a. Determine if you will require the assistance of a private attorney.
  - b. You may contact the St. Joseph County District Court office at 467-5627 and talk with a small claims representative in regards with how to file a civil case.
  - c. Follow all the instructions supplied by the court or your attorney to assure you will have the best possible case.
2. Collection Agency: A collection agency will attempt to recover your check for a fee. Make sure the person or company you hire is licensed by the State of Michigan.
3. The Criminal Justice System (Prosecution): There is no cost to you to seek criminal prosecution through the criminal courts, just rules. REMEMBER, the primary responsibility of the criminal justice system is to prosecute a person who violated the check law. The issuing of a warrant for their arrest is no guarantee you will recover your loss. As a matter of course we request that restitution be considered by the courts but there are no guarantees.

**B. Checks That Are Civil:** The following is a list of checks that cannot be accepted by a law enforcement agency for investigation. There are a few exceptions to the policy and they will be noted after the check description.

1. Stop Payment: Checks that have a “stop payment” placed on them by the check passer must be handled in civil court. Exception is when the check passer has used the “stop payment” to commit a fraud.

2. **Deposit Check:** A check that has been applied to hold any property or item. Other items or application for this type of check may be Security Deposit, Down Payment, Rent Deposit, or Escrow Deposit.
3. **Installment Payment:** A check that is used to repay a loan of any type to include repayment on a personal loan, bank loan, insurance payment, or refund of a deposit check.
4. **Rent Payment:** A check accepted for rent payment must be handled in civil court.
5. **Businesses that receive a commission** for cashing a check will not be accepted for prosecution unless subsequent investigation shows the check was stolen, forged, altered, or counterfeit.

## **SECTION V: FIVE DAY NOTICE**

**(Form notices may be found under “Forms” on the homepage)**

- A. **THE FIVE DAY NOTICE REQUIREMENT:** The Five Day Notice is a requirement for you to proceed any further in the prosecution of a person responsible for passing a bad check.

The following procedure should be followed regarding the sending of the Five Day Notice:

1. **1<sup>st</sup> Copy – Registered Mail:** Send to the person who passed the NSF, Closed Account, or Stop Payment Check. Have the Post Office send the letter “Return receipt requested, deliverable to addressee only”. This is the person who wrote the check.
2. **2<sup>nd</sup> Copy – To Law Enforcement Agency:** Retain a second copy of the Five Day Notice which you will be required to be turned over to the law enforcement agency at the time prosecution is initiated.
3. **3<sup>rd</sup> Copy – Your File Copy:** Keep this copy with your bad check and all other information regarding this check.
4. **When to Send a Five Day Notice:** The Five Day Notice should be sent after the check has been returned from the bank for the second time. Allow the person the full five days to re-pay the check once they received the notice.

## **SECTION VI: INSTRUCTIONS FOR FILING A CRIMINAL COMPLAINT**

1. **Check Identification:** Be sure you have all the information on the check as required by this policy.
2. **Check Passer Contact:** You should attempt to collect your check first. Your first contact may be able to resolve the matter, eliminating the need for law enforcement or court involvement. If you are unable to resolve the matter make note of attempts and / or contact with the passer, including dates, times and results.
3. **Five Day Notice:** The Five Day notice must have already been sent by registered, restricted delivery mail before you file a report. You must provide a dated copy of the notice to the officer upon filing the report.

4. **Bad Check Information Form:** The form can be found under “Forms” on the Sturgis Police Department website homepage. This form must be completed by the complainant and submitted to the officer when a complaint is filed.
5. **Copy Check:** Make a copy of the check for your files and if possible turn over the original check to the officer when you make the complaint. If an original is not available from your bank you will need to provide the officer with a photocopy where available.
6. **Copy of the Green Post Office Registered Mail Card:** You must provide a copy of that dated notice along with the green Post Office Return Receipt card showing whether or not the mail was received and if so the signature of the recipient attached.

#### **ATTACHMENTS:**

- A) Bad Check Information Form
- B) 5-Day Notice Form

## BAD CHECK INFORMATION FORM

1. \_\_\_\_\_  
Complainant Address  
\_\_\_\_\_  
Business Address  
2. Phone: Home \_\_\_\_\_ Work \_\_\_\_\_ Cell \_\_\_\_\_  
3. Bank check drawn on: \_\_\_\_\_  
Account number: \_\_\_\_\_ Check # \_\_\_\_\_  
Date on check: \_\_\_\_\_  
Date returned / reason \_\_\_\_\_ / \_\_\_\_\_
- 

### TO BE COMPLETED BY THE PERSON RECEIVING THE CHECK PLEASE CIRCLE THE PROPER RESPONSE

4. \_\_\_\_\_  
Name & Address of person completing this section  
5. Do you recall the transaction and/or what was purchased? Yes No  
If Yes, what was purchased? \_\_\_\_\_  
6. Was the passer known to you? Yes No  
If Yes, How? \_\_\_\_\_  
7. As the person who accepted the check, can you identify the passer? Yes No  
If Yes, How? \_\_\_\_\_  
8. What did the passer obtain in exchange for the check?  
a) Credit for a bill? Yes No b) Services? Yes No  
c) Cash? Yes No d) Merchandise Yes No  
9. Was the check post-dated and/or did the passer ask you to hold the check for a future date? Yes No  
10. Did you see the passer write the check and/or endorse the check? Yes No  
11. Did you initial, mark upon, or write upon the check at the time you accepted it?  
Yes No. If so, what? \_\_\_\_\_
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**TO BE COMPLETED BY PERSON MAKING REPORT**

1. Please detail what steps you or your employees have taken to contact the passer and/or recover your loss?

Was the passer contacted? Yes No                      If so, by whom and when? \_\_\_\_\_

\_\_\_\_\_

Where? \_\_\_\_\_

Result: \_\_\_\_\_

\_\_\_\_\_

2. Has the passer attempted to make restitution? If so, please detail: \_\_\_\_\_

\_\_\_\_\_

3. Have you successfully server a 5-Day Statutory Bad Check Notice on the passer? Yes No

If yes, How? Certified Mail / Personal Service / Other: \_\_\_\_\_

4. Do you feel that you have exhausted your ability to collect this check? Yes No

5. Do you feel the passer of the check intended to defraud you when he/she passed the check?

Yes No .

6. Have you retained an Attorney or turned this matter over to a Collection Agency in an attempt to collect the check? Yes No

If so, whom? \_\_\_\_\_

Address: \_\_\_\_\_

7. Is the transaction caught on video tape? Yes No

If yes, is that surveillance footage available? Yes No

**NOTE:**

Please indicate anything you feel would help in locating and prosecuting this person:

\_\_\_\_\_

\_\_\_\_\_

**NOTE:**

The decision whether or not to prosecute this individual will be made by a representative of the St. Joseph County Prosecuting Attorney who will take into account numerous factors including what evidence exists of intent to defraud, and the availability of necessary bank records. Criminal prosecution does not guarantee restitution as prosecution is designed to punish, not to collect debts; if you agree to prosecute this defendant, you cannot drop the charges if he/she offer to pay the check. If a criminal case cannot be proven, the check will be returned to you upon request.

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I hereby understand and agree to all the information contained in this document and that it is to be used by and disseminated among all involved Law Enforcement Agencies, the Office of the Prosecuting Attorney, and the Courts. I also understand and agree that this check is being submitted for criminal prosecution and that if criminal prosecution is instituted, it will be necessary for those persons having knowledge of the facts to appear and testify in Court.

I hereby certify that no one has accepted full or partial restitution for this particular check as of this date and further agree NOT TO ACCEPT RESTITUTION without notifying the Sturgis Police Department and the St. Joseph County Prosecutor's Office prior to doing so.

I hereby certify that I have read and understand the directions for this form and that all the facts herein are, to the best of my knowledge, true, accurate, and complete.

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Signature of person filing report

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Date